

## REMARKS

### **Claim amendments**

Applicant amends claim 1 to address ambiguity of the noun "selection" when the claim recites "first selection" and "second selection."

### **Section 103 rejection of claim 1, 33, and 49**

In rejecting claim 1, the Examiner appears to propose the following correspondence between the elements of the claim and the combination of references:

a first local server	ISP (56)	<i>Burns</i>
a second local server	Another ISP (not shown)	<i>Burns</i> <sup>1</sup>
a storage server with said first local server	content server (52)	<i>Burns</i>
a content manager separate from the first and second local servers,	computer (10)	<i>Kindell</i>

As motivation for combining the computer (10) in *Kindell* with the teaching of *Burns*, the Examiner offers two reasons:

- (1) A content manager separate from the local servers would be easier to maintain.
- (2) A content manager separate from the local servers would assure uninterrupted service because if a first local server were down, the content manager could still communicate with the second local server.

With regard to the first motivation, it is not altogether clear that a content manager separate from the local servers is any easier to "maintain" than one that is not separate. Certainly, there is no teaching or suggestion in either reference that this is the case. Nor is Applicant aware of knowledge generally available to one of ordinary skill in the art that a content manager

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<sup>1</sup> Applicant notes that *Burns* expressly discloses only a single ISP. However, since the argument made in this response does not rely on this omission, Applicant includes this non-existent ISP in the claim chart.

separate from local servers is somehow easier to "maintain" than a content manager that is not separate from local servers.

Moreover, it is not at all clear precisely what the Examiner means by "maintain." Certainly, if "maintenance" involves transmission of data to and from the content manager, the fact that the content manager is "separate" from the local server should make little difference. Such data could readily have been transmitted over computer networks.

In addition, to the extent that "maintenance" includes transmission of data, for example, viewable data objects, from a content manager to a local server, a content manager that is *not* separate from that local server would appear to be more readily able to perform this maintenance task. The Examiner's proposed separation of the content manager from the local server would therefore make it more, not less difficult, to perform this maintenance task.

In the absence of any teaching or suggestion for the proposition:

*"a content manager that is separate from the local server is easier to maintain,"*

Applicant submits that the first proposed motivation is insufficient to sustain a section 103 rejection.<sup>2</sup>

With regard to the second motivation, there is again no teaching or suggestion that a separate content manager would somehow result in uninterrupted service. In fact, this appears contrary to common sense. It is quite plain, for example, that if the first local server (i.e. ISP 56) were disabled, then the subscribers 58, 60 would experience a service interruption, *regardless* of where the proposed content server were placed.

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<sup>2</sup> *MPEP* 2143.01, citing *In re Fine* 837 F.2d 1071 and *In re Jones*, 958 F.2d 347 ("Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge available to one of ordinary skill in the art")

One might be tempted to argue that if the content manager is separate from the first local server, and that if the first local server, but not the second local server, were to fail, then at least the subscribers to the second local server would still have service. One may be tempted to conclude that because of this, the system is more reliable.

The fallacy in this line of argument is that it neglects the fact that there is a finite probability that the content manager will fail. If all local servers were to rely on a centralized content manager, then such failure would cause *all* subscribers to lose service. Thus, if a content manager were prone to failure, the overall system may be made more reliable by providing content managers with each local server, thereby limiting the consequences of failure. Certainly, there is no per se rule that a distributed system of this type is inherently less reliable than a centralized system in which a single content manager serves all local servers. In fact, in many cases, the internet's DNS system being a prime example, a system is *more* reliable precisely because it is a distributed system.

The determination of overall system reliability can require knowing the probabilities of failure of each local server and of the content manager, the various joint probabilities as well as the consequences associated with each combination of failures. In short, the evaluation of system reliability is far more complex than the Examiner's sweeping generalization acknowledges.

Applicant submits that there is no teaching or suggestion in the references, or in the knowledge available to those in the art, of the general proposition that:

*"a content manager that is separate from the local server improves reliability"*

For reasons set already set forth above, the second proposed motivation is likewise insufficient to sustain a section 103 rejection.

Applicant submits that the proposed combination of references is merely hindsight reconstruction of the claimed invention, obtained by cobbling together selected elements from

two references and attempting to join them by constructing motivations that, on close examination, appear to make very little sense.

The foregoing arguments apply as well to the section 103 rejection of claims 33 and 49.

All claims dependent on claims 1, 33, and 49 include the limitations of those claims, and are therefore patentable for at least the reasons set forth above.

#### Section 102 rejection of claim 70

In rejecting claim 70, the Examiner appears to consider the claim elements to be disclosed by *Burns* as follows:

A	selecting a first viewable data object in response to a first preselected event;	PC 58 selects a first object.
B	selecting a second viewable data object in response to a second preselected event;	PC 60 selects a second object.
C	transmitting the first and second viewable data objects to respective first and second local servers, the first and second objects being responsive to different priorities of the respective first and second local servers for viewable data object content;	Content server 52 transmits first object to cache server 72 and transmits second object to CMS 74.
D	sending the first viewable data object from the first local server to the first viewer receiver; and	The first object is sent from cache server 72 to PC 58.
E	sending the second viewable data object from the second local server to a second viewer receiver	The second object is sent from CMS 74 to PC 60.

As the Examiner correctly points out, each subscriber PC 58, 60 can obtain data from either the CMS 74 or the cache server 72. If both the CMS 74 and the cache server 72 actually

did store viewable data objects, then a subscriber PC could obtain viewable data objects from either the CMS 74 or the cache server 72.

A close reading of *Burns*, however, reveals that the cache server 72 does not store viewable data objects at all, and that in fact, only the CMS 74 does so. For example, *Burns* states that:

*When the content is received from the content provider, the local service provider stores the content in the cache memory. For instance the content might be a Web page...If the Web page references or includes continuous data files, such as audio or video files, these files are stored in a continuous media server. The target specifications embedded in the Web page to reference the continuous data files are modified to reference the local copy of the continuous data files, as opposed to the original location of the files at the Web site.<sup>3</sup>*

Note that the above quote does not say that "these files are stored in either a cache server or a continuous media server." The language of *Burns* is explicit and unequivocal: the audio or video files "are stored in a continuous media server."

*Burns* also states that:

*"If any subscriber clicks on or otherwise activates a link to an audio or video file, the requested file is served as a continuous stream of data from the continuous media server at the ISP."<sup>4</sup>*

Again, note that this quote does not say that "the requested file is served as a continuous stream of data from either the continuous media server or the cache server at the ISP." The language of *Burns* could hardly be more explicit and unequivocal: the audio and video files are served from a continuous media server.

*Burns* further states that:

*"The cache server 72 is configured as a conventional database server"<sup>5</sup>*

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<sup>3</sup> *Burns*, col. 5, lines 5-17.

<sup>4</sup> *Burns*, col. 5, lines 20-23.

but that

*"The CMS 74 is a server designed particularly for serving continuous data streams, such as video data and audio data, in an ordered and uninterrupted manner."*<sup>6</sup>

It is thus abundantly clear that the CMS and the cache server are completely different in both structure and function. The CMS is optimized for serving continuous data streams (i.e. "video data objects") whereas the cache server is not. To suggest that the CMS and the cache server are both local servers that interchangeably serve video data objects is inconsistent with the plain teaching of *Burns*.

Applicant concedes the plausibility of the proposition that the CMS might correspond to a "second local server." The CMS is, after all, clearly capable of storing and serving video data objects. However, Applicant disputes the notion that the cache server could possibly correspond to a "first local server." *Burns* is quite clear on this point: the cache server does not send or receive viewable data objects, as required by claim 70.

A proper section 102 rejection requires that *each and every limitation* of the claim be disclosed by the cited reference. It is clear that *Burns* fails to teach each and every limitation. Hence, the section 102 rejection relying on *Burns* is improper.

With regard to claims 27-32, which depend on claim 70, the Examiner indicated that those claims are rejected but has not supplied any basis for rejection. Accordingly, Applicant is unable to specifically respond to the rejection of those claims, other than to point out that since those claims depend on claim 70, they include all the limitations of claim 70 and are patentable for at least the same reasons.

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<sup>5</sup> *Burns*, col. 6, lines 57-58.

<sup>6</sup> *Burns*, col. 6, line 66 to col. 7, line 1.

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### Summary

No additional fees are believed to be due in connection with the filing of this response. However, to the extent fees are due, or if a refund is forthcoming, please adjust our deposit account 06-1050 referencing attorney docket number "07442-009001."

Respectfully submitted,

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